IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4851 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIPAKBHAI INDRAVADANBHAI PARIKH & ANR
Versus
THE STATE OF GUJARAT & ANR

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Appearance :
MR KB PUJARA for Applicants
MS MITA PANCHAL for Respondent No.1
MR TS NANAVATI for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 19/07/2006

ORAL JUDGMENT

1. Heard learned advocate Mr.K.B.Pujara for the petitioners, learned APP Ms.Mita Panchal for the respondent No.1 – State of Gujarat and learned advocate Mr.T.S.Nanavati for the respondent No.2.

2. A notice in the matter was issued on 04.05.2006 returnable on 16.06.2006. On service of notice, respondents appeared before the Court and upon request of learned advocates for the parties, the matter was heard finally at this stage.

3. As per the brief facts of the case, the present petitioner No.1 – Dipakbhai Indravadanbhai Parikh is the husband of respondent No.2 – Minalben Dipakkumar Parikh. The marriage between the parties took place on 26.01.1996. Out of this wedlock, on 30.01.1997 a girl child was born. It appears that on account of strain relationship between the parties, in April, 1998, the

respondent No.2 left matrimonial home and had been staying with her parental home. The petitioner No.2, herein and petitioner No.3, herein are parents of petitioner No.1, petitioner No.4 is the brother and petitioners No.5 and 6 are sisters of petitioner No.1.

4. On 15.01.2003, after respondent No.2 left her matrimonial home, a notice vide registered post through advocate came to be issued to petitioner No.1 – husband stating that during her stay at matrimonial home, cruelty was executed towards the respondent No.2, but befitting to a Hindu wife, the respondent No.2 endured all cruelty executed against her. The allegations against the respondent No.3 were levelled that petitioner No.3 used to scold the respondent No.2 and was inflicting mental cruelty. The respondent No.2 was isolated and was not allowed to go anywhere to the extent that prohibition was placed on conversation by respondent No.2 by phone to her parental home and, therefore, in

April, 1998, she left her matrimonial home. In notice, it was placed to the notice of the petitioner No.1 that, the question had arisen of maintenance for respondent No.2 as well as the daughter whose name was Purva. It was expressed that respondent No.2 apprehended that petitioner No.1 had left his house and, therefore, the petitioner No.1 was put to the notice that according to law, for maintenance of mother and child as well as for other remedies necessary steps would be taken. It was alleged that ornaments of respondent No.2 and of daughter Purva were also kept by petitioner No.1 and his family members. In response to this notice, the petitioner No.2 herein on 25.01.2003, replied to respondent No.2 that the allegations levelled in the said notice were not true and that petitioner No.1 to the knowledge of respondent No.2 had been residing in USA since December, 1999 and was not residing at the given address in the said notice. However, vide communication dated 19.11.2005 from respondent No.2 through

advocate addressed to petitioner No.1, it was conveyed that respondent No.2 withdrew earlier notice dated 15.01.2003 issued under the instruction of respondent No.2 by her advocate. It appears from the record that thereafter, respondent No.2 addressed one application on 16.12.2005 to Police Inspector, Satellite Police Station, Ahmedabad City revealing grievance against the present petitioners and to take necessary steps in respect of contents of the said application. It appears from the record that on account of territorial jurisdiction no steps could be taken on said application dated 16.12.2005 and hence, the respondent No.2 filed one FIR being C.R.No.I-647/2005 before the Naranpura Police Station on 18.12.2005 for the events taken place from June, 1996 to 02.11.2005 against the present petitioners for the offences punishable under Sections 498-A, 323, 294(b), 506(1) and 114 of the Indian Penal Code and under Sections 3 and 7 of the Dowry Prohibition Act.

5. In the said FIR, it is alleged that after her marriage, respondent No.2 was residing with petitioners and for five months relationship was smooth between the parties. Thereafter, her-in-laws, mother-in-laws and respondents No.5 and 6 started taunting her. With the hope that the time would be a remedy respondent No.2 endured the said mental cruelty and, thereafter, on 31.01.1997 daughter was born and at that time for 7-8 months, respondent No.2 stayed at the house of her parents. It is alleged that during this period, though her-in-laws visited her, but on account of female child was born, they chose to keep improper behaviour with her. Thereafter, according to respondent No.2, she resumed her-in-laws house. During that period her sister-in-law Sohiniben, petitioner No.6 had been to the house of parents i.e the house of in-laws of respondent No.2 and she instigated the petitioner No.1 against the respondent No.2. On account of this instigation, the petitioner No.1 used to beat

the respondent No.2 with fist and kick and was executing mental cruelty. According to respondent No.2, she was not allowed to see any neighbours or any relatives. It is also alleged that her father-in-law, husband and brother-in-law i.e petitioner No.4 herein were abusing her and driving her out of the house. On account of this, she used to go to her parental home. According to the respondent No.2 in such circumstances, she was used to be pursued by her parents and who were bringing her back to her-in-laws house. Her parents also attempted to pursue her-in-laws. Even though on account of this pursuance for some days, behaviour of her-in-laws remained moderate, but after some days taunting and mental and physical cruelty was being executed. According to the respondent No.2, her-in-laws used to say that her father had given nothing at the time of marriage or even after the birth of a daughter, she was not given anything by her-father and in pursuance of this her-in-laws had driven her

out of the house along with her daughter Purva only with the cloth which they were wearing and, thereafter, from last month of 1998, she was staying with her father Pravinchandra Shantilal Maniyar at Amrakunj Apartments, Sonal Char Rasta, Gurukul, Memnagar, Ahmedabad. Thereafter, according to the respondent No.2, she used to take her daughter to her-in-laws house and at that time, her mother-in-law and sister-in-law used to abuse her and were saying that she had not brought anything in dowry. According to the respondent No.2, she was told by her-in-laws that if she intended to stay with her husband, she was required to bring money for starting new business of her husband and respondent No.2 was told that she would be allowed in her-in-laws house only when she had brought money as per their demand. According to respondent No.2, she was driven out by pushing and door was being closed to her. It is stated in the FIR by respondent No.2 further that thereafter in 1999, the

petitioner No.1 her husband without informing her went to America and, therefore, she issued notice dated 15.01.2003 to her-in-laws and through reply to that notice only, she was informed that her husband had established in foreign country. It is further stated by the respondent No.2 that thereafter, she obtained her husband's address of America and contacted him on phone. Her husband told her that unless, she brought money as demanded by her parents, sisters and brother and did not surrender to their wishes, she was not to be accepted by him and used to threaten her. Thereafter, during Diwali her sister-in-law, Sohiniben was also went to America and both of them have returned. According to the respondent No.2, therefore, on 02.11.2005, she tried to meet her husband along with her daughter, but her-in-laws did not allow to see her husband and she was again informed that unless, she accepts the demand made by them, she would not be permitted to see her husband. The respondent No.2 further stated

that she requested to permit her daughter to see her father and on her this request, she was forced to withdraw the notice which she had issued on 15.01.2003. The respondent No.2 further stated in the FIR that even though, she withdrew the notice issued, she was not allowed to see her husband and, therefore, she was constrained to file the complaint for cruelty executed upon her by her-in-laws i.e father-in-law, mother-in-law, husband, brother-in-law and sisters-in-law.

6. On registering the complaint, investigation was undertaken and ultimately, a charge-sheet came to be filed against the present petitioners in the Court of learned Metropolitan Magistrate, Court No.9, Ahmedabad. The petitioners are on bail in the said criminal case and charge also is framed against them and hence, this petition is preferred by the petitioners to quash and set aside the criminal proceedings against the petitioners vide Criminal Case No.217/2006 pending before Metropolitan Magistrate,

Ahmedabad arising from C.R.No.I-647/2005 registered on 18.12.2005.

7. Learned advocate Mr.K.B.Pujara for the petitioners contended that chronological events took place are, very material to be noted for considering the conduct of the respondent No.2. It was stressed that it is an admitted fact between the parties that after April, 1998, respondent No.2 never resided with her-in-laws and after five years of period suddenly on 15.01.2003, a notice came to be issued by the respondent No.2 to petitioner No.1 alleging cruelty and against the mother-in-law only and with knowledge that her husband had settled in USA in 1999. During the period of 1998 to 2005, no event takes place. It is contended that purposefully, the notice was addressed to the petitioner No.1 at the address of Ahmedabad. It is further contended that a conduct of the respondent No.2 which is material leading to filing of the FIR has played important role and this conduct is a background for filing

of false and frivolous complaint. It is contended that after issuing of first notice on 15.01.2003 and receiving reply immediately from petitioner No.2 again, there is complete silent noticed and no event takes place till 19.11.2005, the date on which respondent No.2 chooses to withdraw the notice which she issued on 15.01.2003. For about a period of more than two years, the respondent No.2 does nothing in this regard. Again after withdrawal of notice on 19.11.2005, on 16.12.2005 an application was preferred by the respondent No.2 to the Police Inspector, Satellite Police Station and on 18.12.2005, the present complaint came to be filed. The veracity of the complaint, according to the learned advocate for the petitioners, can be judged from this conduct of the respondent No.2 that for years together after 1998, only event which takes place of issuance of notice which also came to be withdrawn and after 1998, till December, 2005, respondent No.2 observed silence and suddenly on 18.12.2005,

FIR came to be filed. Learned advocate for the petitioners vehemently urged that whatever cruelty alleged in the FIR will have to be seen within the scope of Section 498-A of the Indian Penal Code and for that very material and admitted fact is, after 1998, the respondent No.2, never resumed for a day at her matrimonial home or stayed with her in-laws. The contention is, cruelty, is not a continuing offence and whatever allegations are made, if at all, in respect of cruelty, it is upto the period of April, 1998.

8. It was contended that within the scope of the proceedings, it is required to be noticed that during the period of 1998 to December, 2005 different allegations at different time against the different petitioners are made by the respondent No.2 amending the allegations. It is contended that very first time, after leaving the house of in-laws, grievance in respect of cruelty was expressed and at that time, the allegations were levelled against the present petitioner No.3 – mother-in-law

and not against any of rest of the petitioners. It is contended that it is noticed that again on 16.12.2005, when application was preferred by the respondent No.2 before the Police Inspector, Satellite Police Station, in addition to the mother-in-law, some other petitioners came to be involved in allegation of cruelty, after lapse of the period of almost seven years. It is contended that when FIR came to be lodged altogether, new facts which were never revealed by the respondent No.2 vide notice dated 15.01.2003 and application dated 16.12.2005 came to be stated by the respondent No.2 in the said FIR after seven years. It was contended that before FIR, none of the communication of allegations in respect of dowry was levelled, while in FIR, for the first time, those allegations against the petitioners were made by respondent No.2. It was submitted that in FIR, only first time, brother-in-law and sisters-in-law came to be involved by the respondent No.2, after

1998. It is, first time, stated by her that after 1998 and after the birth of the daughter, she used to visit in-laws house and she was driven out by her in-laws. Even in the application filed by the respondent No.2 before the Police Inspector, Satellite Police Station, nothing was mentioned about the physical cruelty allegedly executed by the petitioners, while for the first time in the FIR, the fact of physical cruelty was revealed. In the FIR, all the petitioners are attributed role, while petitioner No.6 was not involved in the application filed before the Satellite Police Station, and she was involved in FIR for the first time. To see the conduct of respondent No.2, till filing of the FIR, learned advocate for the petitioners draw the attention of this Court to other documents produced on record of this proceedings. Some Civil proceedings came to be filed before the Family Court in which also, it is stated that Hindu Marriage Petition No.143/2006 was withdrawn on

13.04.2006, but on that day, she stated before the Family Court that with a view to file an application for divorce, the said Hindu Marriage Petition No.143/2006 was being withdrawn. Learned advocate for the petitioners submitted that thereafter, no such application for divorce came to be filed by the respondent No.2. Learned advocate for the petitioners draw again the attention to this Court to some bail applications filed by the parties before the trial Court to see the conduct of the respondent No.2. It was submitted that in the said criminal case, the accused were released on bail on 24.05.2005 and respondent No.2 preferred an application on the same day for direction to the petitioner No.1 for surrendering the passport. On 27.12.2005, the same application was repeated by the respondent No.2. Though the trial Court directed to surrender the passport of other accused, except accused No.1. This shows the conduct of respondent No.2 that to what extent the harassment was

caused to the petitioners. It was contended that thereafter, the said Hindu Marriage Petition preferred, came to be filed wherein also, in para-3 altogether new story was narrated by the respondent No.2.

9. Therefore, learned advocate for the petitioners submits that the proceedings as prayed for by the petitioners are required to be quashed, firstly having regard to the conduct of the respondent No.2 and especially when the different versions after time limit have been made by the petitioner No.2, it goes to suggest that frivolous and vexatious, complaint has been filed by the respondent No.2 only with a view to harass the petitioners and which reveals mala fide on the part of the respondent No.2. It was, secondly, urged that when admittedly, after April, 1998, the parties have not resided together, the version of petitioner No.2 after long gape of seven years prima faice, should not be believed and hence the proceedings are required to be quashed. It is

submitted that there are contradiction in the version of the respondent No.2 made at various stages and ultimately, filing of FIR is ex-facie malafide and false. It is submitted that cruelty as defined under Section 498-A is not a continuous offence as to continue even after wife abandons house of in-laws. Assuming the cruelty alleged by the respondent No.2 on its face value, then also the version of cruelty pertains to a period upto April, 1998 for which the complaint filed on 18.12.2005 would be time barred and no cognizance could have been taken by the learned Magistrate of the offence under Section 467 of the Criminal Procedure Code as punishment of three years is provided under Section 498-A of the Indian Penal Code. It is submitted that the ingredients of Sections 3 and 7 of Dowry Prohibition Act are totally absent, even if the FIR is taken on its face value and, therefore, the learned Metropolitan Magistrate ought not to have been taken the cognizance of the said offence

of Sections 3 and 7 of the Dowry Prohibition Act. It is submitted that examining the whole criminal case for the grounds stated above, this is exceptional and rarest of rare case, the complaint has been filed only with a view to harass the petitioners, the complaint along with the criminal case are required to be quashed within the exercise of powers under Section 482 of the Code of Criminal Procedure. If the complaint along with the background and the conduct of the complainant is taken together, no prima facie ingredients of offence as alleged are revealed in the FIR. It is further contended that conduct of the complainant and time gap referred above are special features of case to be taken into consideration by this court in inherent powers. It is submitted that above all, in criminal case, in support of respondent No.2, all witnesses which are cited are relatives of respondent No.2. Learned advocate for the petitioners places reliance on the following decisions.

[1] In the matter of **B. S. Joshi and Others Vs. State of Haryana and Another,** as reported in **(2003) 4 SCC 675,** paragraphs No.6, 10, 11 and 13 are relied upon. In para-6, it is observed that exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. In para-10, the Apex Court has observed that when there are no chances of conviction, it would be futile to continue a prosecution. In para-11, the Apex Court has cited a decision of the Apex Court in case of *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, case* wherein it is observed that special features of a case be taken by the High Court, into consideration in the interest of justice to permit a prosecution to continue. In para-13 is heavily relied upon by the learned advocate for the petitioners, wherein the Apex Court has observed that there may be many reasons which need not be mentioned for not encouraging matrimonial litigation so that the parties may

ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and that process the parties lose their “young” days in chasing their “cases” in different courts.

It is submitted on relying upon the ratio laid down that matrimonial disputes may not be encouraged and that special feature has appeared in this case, to be taken into consideration by the High Court in proceedings under Section 482 of the Code of Criminal Procedure.

[2] In the matter of **Ruchi Agarwal Vs. Amit Kumar Agrawal and Other,** as reported in **(2005) 3 S.C.C. 299.** Learned advocate for the petitioners has relied upon this decision for the conduct of the parties wherein the Apex Court has held on the conduct of the parties that the conduct of the wife to back out from the compromise entered into and especially when the husband had performed his promise, indicated that criminal complaint from which the said appeal had arisen, was filed by

the appellant to harass the respondent and was held to be an abuse of process of the court if said criminal proceedings were allowed to continue. In para-9, the Apex Court has observed that subsequent events and the conduct of the appellant, would indicate that the criminal proceedings if allowed to stand, would amount to abuse of process of law. It is contended that likewise in this case, the above said conduct revealed by the respondent No.2 if taken into consideration, the criminal prosecution against the petitioners clearly appears to have been filed to harass the petitioners and is nothing but abuse of process of law.

[3] In the matter of **Ramesh and Others Vs. State of T.N.,** as reported in **(2005) 3 SCC 507** wherein considering the scope of Sections 498-A and 406 and Section 4 of the Dowry Prohibition Act on facts, the Apex Court has observed that the allegations made against the sister-in-law were only to the extent causing derogatory remarks as against the informant and not pertaining to dowry demand and misappropriation of property and,

therefore, the Supreme Court has held that so far as sister-in-law was concerned, the Magistrate was not justified in taking cognizance of the said offence as ingredients of such offence were absent.

This decision is relied upon by learned advocate for the applicants on the issue of limitation as well. In paras 8 and 9, the Supreme Court has observed that starting point of limitation for the offence of cruelty as described under Section 489-A of the Indian Penal Code would be last act of cruelty and subjection of a woman to cruelty by her husband or relatives would cease as well as she leaves the matrimonial home. It is submitted on relying upon the said decision that in the present case in 1998, respondent No.2 left the house of in-laws and that is starting point of limitation and within three years from that the complaint is not filed under Section 498-A, but came to be filed only after seven years. It is submitted that the Magistrate, therefore, ought not to have taken cognizance of the offence alleged, because under

Section 468 of the Code of Criminal Procedure offences are time barred.

[4] The last decision which the learned advocate for the petitioners relied upon, in the matter of **State of Punjab Vs. Sarwan Singh,** as reported in **AIR 1981 S.C. 1054** wherein the Apex Court explained the object and seriousness of the provision of the limitation embodied in the Code of Criminal Procedure. In the said decision, the Apex Court observed that the object which the statue seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Art.21 of the Constitution of India rights become absolute and may not be disturbed likewise.

10. It is, therefore, submitted that for the above reasons, the complaint should be quashed under Section 482 of the Code of Criminal Procedure.

11. Learned APP Ms.Mita Panchal for the respondent No.1 – State of Gujarat was heard.

12. Learned advocate Mr.T.S.Nanavati for the

respondent No.2 submitted that the scope of this proceedings is narrow under Section 482 of the Code of Criminal Procedure. It is submitted that it is to be considered as to whether any meticulous examination of the material available can be gone into and as to whether facts in the FIR are wholly non-existence, malafide, frivolous and vexatious. It is submitted that the powers under Section 482 of the Code of Criminal Procedure must be exercised in rarest of rare case, because the consideration would be at pre-trial stage and the evidence is yet to be recorded. It is submitted that therefore, the facts of this case and material produced, are to be examined within the above scope of Section 482 of the Code of Criminal Procedure, where genuineness and reliability of statements made, cannot be appreciated like criminal trial. Coming to the facts of the case, learned advocate for the respondent No.2 submitted that in fact, the wife has endeavour to her best to patch-up a

matrimonial relation which is evident from the circumstances emerging from the record. It is submitted that the circumstances which lead to filing of FIR, an issuance of notice in 2003 indicates that it is not the silence of the wife for years together, dis-entitling her to voice her grievance culminated in shape of FIR, but all through out wife was hoping and enderouring to find place at matrimonial home. It is submitted that notice in 2003 came to be issued in the circumstances that respondent No.2 had come back to her parental home with a girl child. On sheer feeling that ultimately husband had abdicated his duties towards the wife and child, husband had gone to USA, this notice came to be issued which cannot be taken to be malafide attempt. It is submitted that the marriage took place in 25.01.1996 and child was borne on 30.01.1997 and in April, 1998, wife had to return to her parental home. Seeing the plight of the wife, notice came to be issued with the hope of patching up the

matrimonial relationship and, therefore, in those circumstances, everything which wife might have gone through, might not have stated. It is submitted that this would not cast any mala fide on her. It is submitted that the stand of petitioners was made clear by reply given to the notice denying everything instead of saying that wife may resume at her matrimonial home. Somewhere in August, 2005, when husband returns to India, again to improve relationship and in that process, 2003 notice came to be withdrawn through communication dated 19.11.2005 by wife. Otherwise, there was no reason for the wife to withdraw the notice and that too, through advocate except with an intention to patch-up matrimonial relationship. Even in FIR, it has been mentioned that upto April, 1998 attempts were made to unite parties peacefully and, thereafter also, when husband was at USA, he was contacted on phone by wife indicating that a wife had endeavoured everything in her power to regain her status

as respectable wife and even with the hope that their child would receive due attention from her father, she also wrote a letter in her handwriting, but nothing came solacing from the husband and in-laws. It is submitted that therefore, not sudden steps taken and not for the mala fide intention, but in those circumstances, after 1998, the complaint came to be filed on 18.12.2005. It is submitted that no much importance can be attached at this stage in omission or addition as alleged because in 2003, notice was issued for limited purpose and FIR contained whole details. It is submitted that in these circumstances, what is stated in FIR, cruelty as envisaged by Section 498-A(b) continued and it could not be said that the charge against the petitioners under Section 498-A is barred by limitation. It is submitted that the period of seven years from 1998 to 2005, when FIR came to be filed is connected with events which have live link with each other. It is the chain of the circumstances, in

these years culminated in filing of said FIR and, therefore, law of limitation would not apply. Learned advocate for the respondents No.2 submitted that before giving an opportunity to respondent No.2 and her witnesses to prove her case, the prosecution cannot be stifled down at this stage for the grounds advanced in this petition. Within the meaning of Section 498-A(b) cruelty continued in shape of demands as averred in FIR and the offences cannot be said to be barred by limitation. Learned advocate for the respondent No.2 also relied upon the certain decision of the Apex Court, which are as under:

[1] In the matter of **Rajesh Bajaj Vs. State NCT of Delhi and others**, as reported in **AIR 1999 S.C. 1216,** reliance is placed on para-9, the Hon'ble Supreme Court has observed that the factual foundation for the offence has been laid in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients

have not been stated in details. If the FIR is bereft of even basic facts which are absolutely necessary for making out the offence, the Court may be justified and quashed FIR.

[2] In the matter of **M. Narayandas Vs. State of Karnataka and Others,** as reported in **(2003) 11 SCC 251**, reliance is placed on paras-6 and 9 wherein the Apex Court referred to a decision in **Bhajan Lal** case and in case of **Sheonandan Paswan Vs. State of Bihar,** as reported in (**1987) 1 SCC 288.** The Apex Court observed that when criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the informant or the complainant.

[3] In the matter of **State of Karnataka Vs. M. Devendrappa and another,** as reported in **AIR 2002 S.C. 671**, in para-9, the Apex Court observed the law laid down by the Apex Court to deal with the matters under Section 482. It is observed that it would not, at all, be proper for the High Court to analyse the case of the complainant and to

arrive at a conclusion that the case of the complainant is probable or improbable. Inherent power should not be exercised to stifle a legitimate prosecution.

[4] In the matter of **Medchl Chemicals & Pharma (P) Ltd Vs. Biological E. Ltd. And others**, as reported in **(2000) 3 SCC 269**, reliance is placed on paras-2, 14 and 15 of the decision wherein Apex Court has observed that the exercise of power under the inherent jurisdiction to direct the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution.

In para-14 of the abovesaid decision, referring the observation in the matter of Nagawwa Vs. Veeranna Shivalingappa Konjalgi, as reported in (1976) 3 SCC 736, the Apex Court settled and approved four guidelines for quashing of proceedings.

[5] The last decision is in the matter of **Pratibha Rani Vs. Suraj Kumar and another,** as reported in **AIR 1985 S.C. 628**, wherein the Supreme Court ruled that Stridhan is wife's absolute property and on entrustment to husband and in-laws ownership does not stand transfer into co-ownership or partnership. Husband and in-laws are trustees of the said property and have bound to return the same if and when demanded by married woman. The observation of the Supreme Court is in respect of criminal prosecution for misappropriation of stridhan property.

13. Learned advocate for the respondent No.2, therefore, submitted that the application is required to be dismissed.

14. In reply, learned advocate Mr.K.B.Pujara submitted that the decisions which cited by the learned advocate for the respondent No.2 are in respect of other prosecution then the prosecution under Section 498-A. While, the decisions cited by him pertains to the prosecution under Section 498-A only. It is

submitted that so far as the exercise of powers under Section 482 is concerned, the law is different in respect of prosecution under Section 498-A, for which three decisions are cited.

15. Having heard learned advocates for the parties. Record has been gone thoroughly.

16. So far as the scope of Section 482 of the Code of Criminal Procedure and powers conferred therein is concerned, the law is almost settled and it is needless to observe that the exercise of the powers under Section 482 is exception and not rule. The nature of power conferred indicates that Section 482 does not confer any new power on the High Court. It only saves, the inherent power which the Court possessed before enactment of the Code. Section 482 envisages three circumstances under which the inherent jurisdiction may be exercised namely; [1] to give effect to an order under the Code, [2] to prevent abuse of process of Court and [3]

to secure the ends of justice. There cannot be any inflexible rule which would govern the exercise of inherent jurisdiction. But it is settled that the court, while exercising such power does not function as the Court of Appeal or Revision. The inherent jurisdiction is very vital and still, has to be exercised sparingly, carefully and with caution. The cardinal principle is, the powers conferred must be exercised to do real and substantial justice for administration of which alone the Court exists. It is also not be proper for this Court, ordinarily to embark upon an inquiry, whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. At the same time, in such proceedings, normally High Court must refrain from giving a prima facie decision in a case where entire facts are incomplete and hazy and in case like this, when evidence is yet to be recorded.

17.The guidelines given by the Supreme Court in

Bhajan Lal's case (1992 AIR SC 604) would be useful to decide this matter. In the said decision, vide para-108, the following guidelines are given by the Apex Court and the facts of the present case, whether covers under any of those categories, as prescribed above.

> “In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and

sufficiently channelised and inflexible guidelines or rigid formulae and to given an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the

purview of Section 155(2) of the Code.

(3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5)Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6)Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and

personal grudge.”

18. Now, referring to the FIR and the statements of the witnesses, it clearly appears that the allegations are made against all the petitioners about cruelty within the meaning of Section 498-A of the Indian Penal Code. So far as the petitioners No.5 and 6 are concerned, the allegations are in respect of instigating, the petitioner No.1 which was resulting in physical beating of respondent No.2 and mental cruelty. The allegations are also made that she was forced to be in isolation and was not allowed to meet with anybody and allegations are also levelled that even petitioner No.4 used to give abuse to respondent No.2. The fact is also mentioned that during this period i.e before 1998 many times, she returned to her parental home and, thereafter, her parents were required to pursue her in-laws. The allegations are in respect of demand of dowry and deserting her in 1998 are also made. It

is also stated and found from record that even, thereafter, when she endeavour to resume her in-laws with her daughter, she was used to be driven out by her mother-in-law and sisters-in-law giving her abuses and stating that she had not brought anything in the dowry. The allegations are also made forcing upon her to bring money for starting new business of the husband. These all according to wife has taken place after she was driven out of the matrimonial home. Thereafter, her husband went to USA and according to the statement made in the FIR, she again endeavoured for reunification as aforesaid, but failed and hence, this complaint came to be filed. Now examining these allegations within the scope of this proceedings, it clearly appears that the case does not fall within any of the categories as described by the Apex Court in the State of Haryana Vs. Bhajan Lal in para-108. This is not a stage wherein it could be finally decided even prima facie that allegations

levelled against the petitioners are false, frivolous and vexatious without recording of evidence on the grounds advanced by the petitioners. It is true that between leaving of the house by wife and filing of the FIR, the period of seven years is elapsed, but what is stated in the FIR in respect of endeavour made by the wife during this period and since this statement cannot be tested or weighed on reliability, genuineness, probability and improbability, it cannot be said that lapse of such period would, by itself, indicated the filing of false complaint and certifying the version to be mala fide and incorrect. Taking the FIR as it is, along with the material placed and collected during investigation prima facie, it cannot be said that what is stated and what is collected by Investigating Agency is so unbelievable and false as to scuttle the prosecution at the threshold. It is also true that during this period of seven years from April, 1998 to December, 2005, a notice was

issued and withdrawn and certain versions were made in the notice alleging only mother-in-law and amplified version with addition and modification is made in the application preferred before the Satellite Police Station and yet more addition and modification is made in FIR, still this would not be a ground to come to a conclusion that what is alleged in the FIR is so unbelievable that the averments made in the FIR would render improbable. This is so because in FIR endeavour made by wife to patch up relationship as stated and endeavour made by the wife during the period, when her husband was at USA as well as when he returned in India, is, amply, stated and at this stage, without recording of the evidence, it would be difficult to come to the conclusion that those averments are untrue because no such allegations were levelled by the wife before filing of the FIR. In any case, when without embarking upon an inquiry, if the whole case is considered as it is, it cannot be said

that if the allegations are not controverted would not disclose the commission of the offence under Section 498-A and, therefore only, because the allegations came to be lodged after seven years of leaving the house by the wife and because witnesses are related, the prosecution cannot be quashed under inherent powers. Intrinsic worth of the evidence and statements shall have to be appreciated during trial after giving proper and ample opportunity to the prosecution, an ample and proper opportunity to defence to defend the prosecution case. There is some substance in the submission of learned advocate Mr.K.B.Pujara for the petitioners that the allegations made in respect of Dowry Prohibition Act under Sections 3 and 7 are not prima facie made out. However, having regard to the allegations made in the FIR, it would be just and proper to put the parties to the trial in this respect also and not to make any further observations in this regard.

19.Likewise, when it is contended that the

offence of cruelty is committed and for limitation, the period of limitation starts as soon as the wife when leaves the house of in-laws, it must be observed that this is not the case wherein after leaving the house in 1998 upto 2005 nothing has happened. Though it is contended that except issuance of notice in 2003, nothing has happened and in any case so far as offence under Section 498-A is concerned, the time runs right from the day, wife leaves the matrimonial house, but going through the material in the shape of FIR, it appears that the wife endeavoured even after April, 1998 to improve relationship during the tenure when her husband was at USA and, thereafter also, when her husband returned from USA till 02.11.2005. Now this material cannot be examined for its intrinsic value as to the truthfulness and genuineness without testing the same during trial through the evidence. There are no other circumstances, appearing from the record as to render this fact

improbable on its face value and, therefore, it would not be proper at this stage to observe that the offence under Section 498-A is barred by limitation nor at the same time, it could not also be observed that the said offence is within the period of limitation, but the issue would remain within the arena of recording of evidence and to come to the conclusion that as to whether the said offence is within the period of limitation or not. The present petitioners, therefore, will be at liberty to raise this issue of limitation during the trial and in the completion of it, the concerned Court shall decide the issue in final conclusion of the trial upon the evidence recorded in this respect and keeping in mind the reliability of the evidence and appreciation of the same. Learned advocate for the petitioners has relied upon the decision of **Ramesh and Others Vs. State of T.N.**, as reported in (2005) 3 SCC 507, wherein the Apex Court pleased to observe that once the wife leave the house of

in-laws, so far as cruelty is concerned, the period of limitation runs to start but the present case is on different footing on the facts and reading the material as it is, it appears that the allegations of wife reaches beyond period of April, 1998, when she avers that she used to visit her in-laws after 1998, and her in-laws were demanding an amount for starting new business of the husband. It is also found that wife endeavoured to contact the husband at America and his non-responsive attitude and lastly the incident narrated in the FIR of 02.11.2005, on the plain reading covers under the definition of cruelty under Section 498-A (b). These are the observation at pre-trial stage and after recording of the evidence may not turn out to be cruelty, ultimately, and the contentions raised by the petitioners as to limitation, therefore, will have to be considered by the trial court on evidence adduced.

20.Learned advocate for the petitioners

contended that the conduct of the party is material aspect to consider the case in quashing proceedings especially in matrimonial matters. The conduct of respondent No.2 is shown by contending that firstly, during seven years from 1998 to 2005, the wife remains silent except issuance of one notice in 2003 alleging against only mother-in-law and making amendments at various stages like filing an application before Satellite Police Station, filing FIR, filing H.M.P. wherein altogether different version narrated, anxiety of wife to see that the bail granted to the petitioners are cancelled and passport especially of petitioner No.1 is deposited, so he could not travel out of country, is the conduct relevant to be examined along with the FIR filed by her to come to the conclusion that the allegations made in FIR is sheer, abuse of process of law. A reliance is placed in the decision of the Apex Court in **B. S. Joshi and Others Vs. State of Haryana and**

Another, as reported in **(2003) 4 SCC 675** wherein in para-6, it is observed that exercise of power under Section 482 would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of process of any court or otherwise to secure the ends of justice. The learned advocate for the petitioners contended that if the totality of the circumstances i.e. the conduct of the respondent No.2 and the FIR filed by her in the above background is considered along with the fact that this is a matrimonial matter, it is certain that the FIR came to be filed with ulterior motive, mala fide and only to harass the petitioners. The learned advocate for the petitioners also relied upon this decision of the Apex Court especially upon observations in paras-10 and 11 about the matrimonial matters and in para-11 where the Apex Court, after referring a decision in Madhavrao's case held that while exercising

inherent power of quashing under Section 482, it is for the High Court to take into consideration any special feature which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. A special feature in such matrimonial matters are evident.

21. True that in matrimonial matters, there is special feature of fiduciary relationship of human beings. It cannot be said that such special feature, cannot be taken into consideration. It must be remembered that in the above said decision of B.S.Joshi, issue was after filing the complaint by the wife under Section 498-A of the Indian Penal Code, settlement had arrived at between the parties. The Apex Court disregarding compoundability of offence, considered special feature of the case under exercise of powers in inherent jurisdiction and came to the conclusion that it was futile to continue

the prosecution when wife herself was ready to forgo the complaint and was ready and willing to resume married life with her husband. In the present case, there is no such special feature as to come to the conclusion that the continuous of the prosecution would be abuse of process of law. True it is that the wife might have made different versions at different time. She might not have involved, other petitioners earlier and she involved all the petitioners in FIR. But the averments made in the FIR are taken into consideration as aforesaid without recording of the evidence, under inherent powers of this Court, it cannot be said that because of tendency of wife to change the version of the FIR and averments made would not disclose any offence. Except this, there are no special features from the facts of this case. In this respect, learned advocate for the petitioners also cited a decision of the Apex Court in the matter of **Ruchi**

Agarwal Vs. Amit Kumar Agrawal and Other, as reported in **(2005) 3 S.C.C. 299**, wherein also as per the facts of the case, after filing of the complaint, spouses entered into compromise and wife undertook to withdraw litigation including prosecution. Wife did not withdraw prosecution and contended that compromise was on account of coercion. When prosecution came to be quashed by the High Court at the instance of husband, wife filed an appeal before the Supreme Court stating that such compromise had been obtained by coercion and under threats from the respondents. Examining the material, the Apex Court observed that the compromise was duly acted upon by the respondent – husband and he sincerely performed his part of compromise, while wife – appellant performed her part partially and, thereafter, made a grievance that the compromise was obtained by coercing and the divorce was obtained on the strength of said compromise. The Apex Court observed from the above facts that such facts

indicated that the criminal complaint from which the said appeal before the Supreme Court had arisen was filed by the wife only to harass the respondent and the Supreme Court took this conduct of the wife into consideration and relying upon, subsequent events after filing of the complaint came to the conclusion that it would be an abuse of process of the Court, if the criminal proceedings from which the appeal had arisen was allowed to continue. The facts of the present case does not reveal such conduct of wife or such subsequent events to be taken into consideration in this proceedings and to come to the conclusion that to continue the prosecution would be abuse of process of Court. The conduct which is alleged to the wife is in respect of the silence of wife for years together and making different version at different time for which the wife attempted to explain circumstances in FIR.

22. In view of the above discussions, this petition stands dismissed. It is

categorically observed that any observations made in this judgment is at pre-trial stage and prima facie and that the trial Court shall not be influenced by any of the observations made by this court in this judgment, while conducting the trial and coming to the conclusion of said trial. Upon request of learned advocate for the petitioners, it is further directed that having regard to the age of petitioners No.2 and 3 and since the petitioner No.1 has been allow to go abroad and having regard to other circumstances, the presence of the accused during trial may not be insisted by the trial Court unless the same is absolutely necessary under the Criminal Procedure Code. Notice is discharged.

[J. R. VORA,J.]

(vijay)